



DEPARTMENT OF HOMELAND SECURITY
U.S. CUSTOMS AND BORDER PROTECTION
NOTICE OF ISSUANCE OF FINAL DETERMINATION CONCERNING
CERTAIN NOTEBOOK COMPUTER PRODUCTS

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (“CBP”) has issued a final determination concerning the country of origin of certain notebook computer products known as the EliteBook 840-G1 Notebook. Based upon the facts presented, CBP has concluded that in all four scenarios, the country of origin of the notebook computer is Country A for purposes of U.S. Government procurement.

DATES: The final determination was issued on March 10, 2015. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR § 177.22(d), may seek judicial review of this final determination within [insert 30 days from date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Grace A. Kim, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade (202) 325-7941.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on March 10, 2015, pursuant to subpart B of Part 177, U.S. Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of certain notebook computer products known as the EliteBook 840-G1 Notebook, which may be offered to the U.S. Government under an undesignated government procurement contract. This final

determination, HQ H240199, was issued under procedures set forth at 19 CFR Part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511-18). In the final determination, CBP concluded that in all four scenarios, the processing in Country D or F does not result in a substantial transformation. Therefore, the country of origin of the notebook computer in all four scenarios is Country A for purposes of U.S. Government procurement.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: March 10, 2015.

Glen E. Vereb,
Acting Executive Director,
Regulations and Rulings ,
Office of International Trade.

HQ H240199

[GPO FOLLOW LIT.]
March 10, 2015

OT:RR:CTF:VS H240199 GaK

CATEGORY: Origin

Mr. Carlos Halasz
Hewlett-Packard Company
8501 SW 152 St.

Palmetto Bay, FL 33157

RE: U.S. Government Procurement; Country of Origin of Computer Notebook; Substantial Transformation

Dear Mr. Halasz:

This is in response to your letter dated March 14, 2013, and your supplemental submission dated March 10, 2014 requesting a final determination on behalf of Hewlett-Packard Company ("HP") pursuant to Subpart B of Part 177 of the U.S. Customs and Border Protection ("CBP") Regulations (19 C.F.R. Part 177). Under these regulations, which implement Title III of the Trade Agreements Act of 1979 ("TAA"), as amended (19 U.S.C. §2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or for products offered for sale to the U.S. Government. This final determination concerns the country of origin of HP's EliteBook 840-G1 Notebook ("Elitebook"). As a U.S. importer, HP is a party-at-interest within the meaning of 19 C.F.R. § 177.22(d)(1) and is entitled to request this final determination. A meeting was held at our office on January 5, 2015.

In your letter, you requested confidential treatment for certain information contained in the file. Pursuant to 19 C.F.R. 177.2(b)(7), the identified information has been bracketed and will be redacted in the public version of this final determination.

FACTS:

The Elitebook is a commercial notebook computer. The components of the Elitebook are sourced from various countries. The components include:

- Base Unit: The base unit is the bottom of the finished notebook made of a metal frame, with metal or plastic skins. The base unit includes antennae, a printed circuit assembly ("PCA"), the central processing unit ("CPU"), the BIOS chip, the keyboard, cables, connectors and speakers. The CPU is sourced in Country A, [*****] or Country G, [*****]. The base unit is assembled in Country A, a non-TAA designated country.
- Hinge-Up: The hinge-up is the top of the finished notebook. It consists of an LCD display, surrounding frame, and hinges for attachment to the base unit. The hinge-up is assembled in Country A.
- Hard Disk Drive/Solid State Drive: The drives store data, including the operating system and value-added software. Both drives are sourced in Country A or Country B, [*****] a TAA designated country.
- WLAN Card: The WLAN card establishes wireless connections with other devices. It consists of a printed circuit board, radio frequency transmit/receive components and baseband processor. The country of origin of the WLAN card is Country A.

- Random Access Memory (RAM): The RAM are integrated circuits affixed to a printed circuit board. It has direct access to the CPU and is the main memory system. It is produced in Country A, Country B, or Country C, [*****] a TAA designated country.
- Battery: The country of origin of the battery is Country A.
- BIOS: The BIOS executes the instructions that start the notebook and prepares the hardware for use. It loads the operating system and passes control of many functions to the operating system. The BIOS is developed and written at HP's laboratory in Country D, [*****] a TAA designated country.
- Operating system ("OS"): The OS works with application programs to perform user interface, job management, task management, data management, device management, and security. The OS is a third-party product that HP downloads onto most Elitebooks, and is developed in Country D.
- Other minor components such as cables, brackets, screws, CD's and manuals are sourced from a variety of countries, and comprise less than 2% of the Elitebook.

The BIOS is electronically transmitted from Country D to Country E, [*****] a TAA designated country, where it is maintained by a HP team. BIOS maintenance includes adding device support, such as a new wireless LAN card, and improving field issues that were not discovered during standard testing. HP states that the Elitebook is non-functional without the BIOS because it executes the instructions that start the notebook and provides the basic instructions for controlling the system hardware, and includes all necessary hardware drivers and provides a uniform interface for the OS to access the hardware. HP further states that the BIOS authenticates the hardware, OS, and application programs before they are loaded.

According to your letter, HP will assemble the Elitebook by one of the four scenarios described below.

Scenario 1: This scenario applies when all the components are imported to Country F, [*****] a TAA designated country for assembly.

1. The base unit is placed over the hinge-up.
2. The hinges are closed and screwed shut.
3. Cables for the display and the antennae are routed and secured to avoid damage.
4. The unit is moved to a station where the memory, hard disk/solid state drive, and WLAN are installed into the unit, connected and secured in place.
5. The battery is inserted into the base unit.
6. The unit is moved to the next station where the OS is downloaded onto the hard disk/solid state drive. The BIOS is downloaded on the flash device (BIOS chip) that is inside the base unit.

After assembly is complete, the unit goes through a testing phase, where the operator performs tests as indicated by HP developed diagnostic software and addresses any problems that arise. The acceptable units are sent to packaging and 4% of the units are reviewed for quality assurance, which consists of a "hood off" audit to ensure that all components are present, a "pre-test" using a software diagnostic program, and a "run-in" software diagnostic program to identify

possible errors that are fixed after the run. After packaging, 2% of the units are opened for an “out of the box audit” to ensure that all accessories are included and the “run-in” test is executed.

Scenario 2: This scenario is identical to Scenario 1 except that the base unit and the hinge-up are combined in Country A and imported into Country F for remaining assembly processes, testing, quality control and packaging.

Scenario 3: This scenario is identical to Scenario 1 except that all the hardware components are assembled in Country A before they are imported to Country F. The production/assembly that occurs in Country F are the BIOS and the OS download as well as the testing, quality control and packaging.

Scenario 4: In this scenario, all the hardware components are assembled in Country A and imported to Country D. The BIOS and the OS is downloaded in Country D then the notebook goes through testing, quality control and packaging.

ISSUE:

In each scenario, what is the country of origin of the Elitebook for purposes of U.S. government procurement?

LAW AND ANALYSIS:

Pursuant to Subpart B of Part 177, 19 CFR § 177.21 et seq., which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 C.F.R. § 177.22(a).

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens v. United States*, 573 F. Supp. 1149 (Ct. Int'l Trade 1983), *aff'd*, 741 F.2d 1368 (Fed. Cir. 1984). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not

result in a substantial transformation. See C.S.D. 80-111, C.S.D. 85-25, C.S.D. 89-110, C.S.D. 89-118, C.S.D. 90-51, and C.S.D. 90-97. If the manufacturing or combining process is a minor one which leaves the identity of the article intact, a substantial transformation has not occurred. *Uniroyal, Inc. v. United States*, 3 Ct. Int'l Trade 220, 542 F. Supp. 1026 (1982), *aff'd* 702 F. 2d 1022 (Fed. Cir. 1983).

“The term ‘character’ is defined as ‘one of the essentials of structure, form, materials, or function that together make up and usually distinguish the individual.’” *Uniden America Corporation v. United States*, 120 F. Supp. 2d. 1091, 1096 (citations omitted) (Ct. Int'l Trade 2000), *citing National Hand Tool Corp. v. United States*, 16 Ct. Int'l Trade 308, 311 (1992). In *Uniden* (concerning whether the assembly of cordless telephones and the installation of their detachable A/C (alternating current) adapters constituted instances of substantial transformation), the Court of International Trade applied the “essence test” and found that “[t]he essence of the telephone is housed in the base and the handset.

In *Data General v. United States*, 4 Ct. Int'l Trade 182 (1982), the court determined that for purposes of determining eligibility under item 807.00, Tariff Schedules of the United States (predecessor to subheading 9802.00.80, Harmonized Tariff Schedule of the United States), the programming of a foreign PROM (Programmable Read-Only Memory chip) in the United States substantially transformed the PROM into a U.S. article. In programming the imported PROMs, the U.S. engineers systematically caused various distinct electronic interconnections to be formed within each integrated circuit. The programming bestowed upon each circuit its electronic function, that is, its “memory” which could be retrieved. A distinct physical change was effected in the PROM by the opening or closing of the fuses, depending on the method of programming. This physical alteration, not visible to the naked eye, could be discerned by electronic testing of the PROM. The court noted that the programs were designed by a U.S. project engineer with many years of experience in “designing and building hardware.” In addition, the court noted that while replicating the program pattern from a “master” PROM may be a quick one-step process, the development of the pattern and the production of the “master” PROM required much time and expertise. The court noted that it was undisputed that programming altered the character of a PROM. The essence of the article, its interconnections or stored memory, was established by programming. The court concluded that altering the non-functioning circuitry comprising a PROM through technological expertise in order to produce a functioning read only memory device, possessing a desired distinctive circuit pattern, was no less a “substantial transformation” than the manual interconnection of transistors, resistors and diodes upon a circuit board creating a similar pattern.

In *Texas Instruments v. United States*, 681 F.2d 778, 782 (CCPA 1982), the court observed that the substantial transformation issue is a “mixed question of technology and customs law.”

In C.S.D. 84-85, 18 Cust. B. & Dec. 1044, CBP stated:

We are of the opinion that the rationale of the court in the Data General case may be applied in the present case to support the principle that the essence of an integrated circuit memory storage device is established by programming; . . . [W]e are of the opinion that

the programming (or reprogramming) of an EPROM results in a new and different article of commerce which would be considered to be a product of the country where the programming or reprogramming takes place.

Accordingly, the programming of a device that confers its identity as well as defines its use generally constitutes substantial transformation. *See also* Headquarters Ruling Letter (“HQ”) 558868, dated February 23, 1995 (programming of SecureID Card substantially transforms the card because it gives the card its character and use as part of a security system and the programming is a permanent change that cannot be undone); HQ 735027, dated September 7, 1993 (programming blank media (EEPROM) with instructions that allow it to perform certain functions that prevent piracy of software constitute substantial transformation); and, HQ 733085, dated July 13, 1990; *but see* HQ 732870, dated March 19, 1990 (formatting a blank diskette does not constitute substantial transformation because it does not add value, does not involve complex or highly technical operations and did not create a new or different product); and, HQ 734518, dated June 28, 1993, (motherboards are not substantially transformed by the implanting of the central processing unit on the board because, whereas in Data General use was being assigned to the PROM, the use of the motherboard had already been determined when the importer imported it).

Scenario 1 and 2:

In Scenario 1, the base unit containing a PCA, CPU, BIOS chip, amongst other components is placed over the hinge-up (which contains a LCD display) in Country F. The hard disk drive and WLAN are installed and the OS and BIOS are downloaded. In Scenario 2, the base unit and hinge-up are already assembled in Country A before importation into Country F. After the hardware components are assembled, the BIOS is downloaded onto the flash device.

HP claims that as a result of the assembly operations performed in Country F, the various foreign components undergo a substantial transformation, such that the finished Elitebook becomes a product of Country F for purposes of U.S. Government procurement. HP cites HQ 560677, dated February 3, 1998, to support the argument that the assembly operations coupled with the BIOS download transform discrete and inoperable components into a finished product with a different name, character and use. In HQ 560677, CBP considered two different notebook computers manufactured in the U.S. with parts and components from various countries. In the first scenario, the imported chassis included the LCD and the CPU from various countries, but the BIOS and memory modules were not included. Other imported components were the hard disk drive (Thailand), BIOS chip (U.S.), floppy disk drive (China), AC adapter (China), CD ROM (Japan), fax modem cards (U.S.), a docking station (Taiwan), and memory board (Korea, Japan, or Singapore). The assembly process in the U.S. consisted of installing the BIOS chip (which was of U.S. origin), the memory modules, the hard disk drive, the network interface card, and downloading the flash BIOS into non-volatile RAM. In the second scenario, the imported chassis included the LCD screen (Taiwan), the floppy disc drive (China), and the BIOS chip but neither the keyboard, the CPU nor other primary chips were included. Similar components as in the first scenario were imported and the assembly process in the U.S. consisted of installing the CPU processor module (of U.S. origin), the hybrid cooler, the keyboard, the memory modules, the hard disk drive, the PCMCIA modem card, and downloading the flash BIOS into non-volatile

RAM. CBP concluded that the foreign components used in the manufacture of the notebook computers lost their separate identities and became an integral part of a notebook computer as a result of the operations performed in the U.S.

HQ H241177, dated December 3, 2013, Ethernet switches were assembled to completion in Malaysia and then shipped to Singapore, where U.S.-origin software was downloaded onto the switches. CBP found that the software downloading performed in Singapore did not amount to programming and that the country of origin was Malaysia, where the last substantial transformation occurred.

In this case, the base unit is assembled in Country A and it includes the antennae, printed circuit assembly, CPU, BIOS chip, keyboard, cables, connectors, and speakers. The base unit is imported into Country F and the BIOS from Country D is downloaded. Based on the facts in this case and consistent with the Customs rulings cited above, we find that under Scenarios 1 and 2, the last substantial transformation of the Elitebook components occurs in Country A. Most of the major components are sourced in Country A, unlike HQ 560677, where the components came from various countries and in each scenario a major component (BIOS chip or CPU) was of U.S. origin, where the assembly occurred. Further, downloading the BIOS does not substantially transform the Elitebook. Therefore, we find that the country of origin for purposes of U.S. Government procurement in Scenarios 1 and 2 is Country A.

Scenario 3:

In Scenario 3, all of the hardware components are assembled in Country A and imported into Country F. The operations that occur in Country F are BIOS download, OS download, testing, quality control and packaging. The issue is whether the downloading of the BIOS and OS substantially transforms the notebook computer. As indicated above, the programming of a device that defines its use generally constitutes a substantial transformation. Software downloading by itself, however, does not amount to programming, which involves writing, testing and implementing code necessary to make a computer function in a certain way. *See* HQ H241177 (Dec. 3, 2013) *supra*, *see also Data General supra*.

Consistent with the Customs rulings cited above, we find that the BIOS and OS downloading does not result in a substantial transformation in Country F. Given these facts, we find that the country where the last substantial transformation occurs is Country A, where the major assembly processes are performed. The country of origin for purposes of U.S. Government procurement in Scenario 3 is Country A.

Scenario 4:

Here, all of the hardware components are assembled in Country A and imported into Country D. In Country D, the BIOS and OS are downloaded and the Elitebook is tested for quality assurance and packaged. As indicated above, software downloading by itself does not result in a substantial transformation. Consistent with the Customs rulings cited above, we find that the country where the last substantial transformation occurs is Country A, where the major

assembly processes are performed. The country of origin for purposes of U.S. Government procurement in Scenario 4 is Country A.

HOLDING:

Based on the facts of this case, we find that in Scenarios 1, 2, 3, and 4, the last substantial transformation takes place in Country A. The country of origin of the Elitebook is Country A for purposes of U.S. Government procurement and country of origin marking.

Notice of this final determination will be given in the Federal Register, as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 C.F.R. § 177.30, any party-at-interest may, within 30 days of publication of the Federal Register Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Glen E. Vereb
Acting Executive Director
Regulations and Rulings
Office of International Trade
[/<END>]

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